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OPINION

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HON. E. R. HOAR, late Attorney General of the U. S.

RELATING TO AND CONFIRMATORY OF THE RIGHT OF

The Central Branch Union Pacific Railroad Company

To continue and extend its Road to the Main Trunk, (the Union Pacific R. R.,)
and for and in aid of the construction thereof to receive lands
and bonds from the United States.

OPINION.

My opinion has been asked by the Central Branch Union Pacific Railroad Company "upon the question whether that company has the right, under *existing laws* of the United States, to continue and extend its road from the point to which it is now completed, so as to connect with the Union Pacific Railroad at the 100th meridian, and to claim and receive in aid of such construction the lands and bonds to which the Union Pacific Railway Company, Eastern Division, would have been entitled if it had built its railroad between the same points."

I gave this subject long and careful consideration when holding the office of Attorney General of the United States, and when it was expected that my official opinion would be required. Circumstances made such an opinion unnecessary, and none was given. I have again carefully re-examined the matter, and proceed to state the conclusions to which I have arrived:

The leading object and design of the act of July 1, 1862, was to secure the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean. The general purpose met with the hearty support of Congress and the country, but there was much division of opinion as to

the point on that river which should be selected as the point of departure. The conflict of opinion and interests was settled by the adoption of a single line through the national territories, beginning at the 100th meridian, and extending westward, to meet and connect with the Central Pacific Railroad, of California. This main road, or trunk line, was authorized and required to construct a road from a point on the western boundary of Iowa to the main trunk, at the 100th meridian.

2. To connect with this, a Kansas corporation, the Leavenworth, Pawnee and Western Railroad Company, was authorized to construct a road from the mouth of the Kansas river to the same point at the 100th meridian. This is termed in the act "the road through Kansas."

3. The Hannibal and St. Joseph Railroad was authorized to extend its road from its western terminus at St. Joseph, on the Missouri river, via Atchison, to connect with the road through Kansas; or, if actual survey should render it desirable, with the consent of the Kansas legislature, directly from St. Joseph, to connect and unite with the road leading from the western boundary of Iowa at any point east of the 100th meridian, or with the Main Trunk road at said point. The Central Branch has succeeded to the rights of the Hannibal and St. Joseph Railroad.

There were thus three points on the Missouri river designed to accommodate different routes of eastern traffic, which the *plan* required to be brought into connection with the main trunk. The point fixed at St. Joseph had the distinction of being the farthest western terminus of an existing and completed railroad.

That this scheme contemplated the connection of the several points on the Missouri river with the trunk line, as an essential part of the entire plan, seems to me to be manifest, from the whole structure of the act of 1862, and from many of its particular provisions. By section 10, the Hannibal and St. Joseph Railroad, the Pacific Railroad Company of Missouri, and the Union Pacific Railroad Company,

or either of them, were authorized to unite upon equal terms with the said Kansas Company in constructing said railroad and telegraph to said meridian of longitude, with the consent of the State of Kansas. By section 12, the *track* upon the *entire line* of *railroad* and *branches* was required to be of *uniform width*, so that, when completed, *cars could be run from the Missouri river to the Pacific coast*; and the *whole line* of said *railroad* and *branches* was required to be operated and used for all purposes of communication, travel, and transportation, so far as the public and Government are concerned, as *one connected and continuous line*. The subsidy of lands and bonds was granted to each of the companies as a part of *one* great national enterprise.

I can see no room to doubt that the corporators of the Hannibal and St. Joseph Railroad and its assignees were invited to invest their property to a large amount in the extension of that road, upon the complete and full assurance by Congress that if it should be completed within the limitations of the act, and in conformity to it, they should have all the benefits which would accrue from forming a *part* of the great Pacific Railroad, and sharing in the traffic of such an important avenue of commerce.

By the act of July 2, 1864, a most important provision was made by Congress to guard against the possible failure of any one of the companies authorized to construct a part of the entire work contemplated to complete its part. By section sixteen of the act of 1862, all of the railroad companies named in that act, or any two or more of them, were authorized to form themselves into a consolidated company, and to construct the railroad and branches upon the same terms and conditions as were applicable to the several companies before consolidation. By the sixteenth section of the act of 1864, any two or more of the companies named in the act were in like manner authorized to unite and consolidate their organizations, and to succeed to, possess, and be entitled to receive from the United States all the grants, benefits, &c., and subject to the same terms and conditions which belonged

to the companies respectively which were so consolidated. The new and important provision then followed, in these words :

“And, in case, upon the completion by such consolidated organization of the roads, or either of them, of the companies so consolidated, any other of the road or roads of either of the other companies authorized as aforesaid (and *forming or intended* as necessary to form a *portion* of a *continuous line* from *each* of the several points on the Missouri river hereinbefore designated to the Pacific coast) shall not have constructed the number of miles of its said road within the time herein required, such consolidated organization is hereby authorized to continue the construction of *its* road and telegraph in the general direction and route upon which such incomplete or unconstructed road is hereinbefore authorized to be built, until such continuation of the road of such consolidated organization shall reach the constructed road and telegraph of said other company, and at such point to connect and unite therewith, and for and in aid thereof, the said consolidated organization may do and perform in reference to such portion of road and telegraph as shall so be in continuation of its constructed road and telegraph, and to the construction and equipment thereof, all, and singular the several acts and things hereinbefore provided, authorized, or granted to be done by the company hereinbefore authorized to construct and equip the same, and *shall be entitled to similar and like grants, benefits, immunities, guarantees, acts and things* to be done and performed by the Government of the United States, by the President of the United States, by the Secretaries of the Treasury and Interior, and by commissioners, in reference to such company and to such portion of the road hereinbefore authorized to be constructed by it, and upon the like and similar terms and conditions, so far as the same are applicable thereto.

* * * * *

And in case *any* company authorized thereto shall not enter into such consolidated organization, such company, upon the *completion* of its road as hereinbefore provided, *shall be entitled* to and is hereby authorized *to continue and extend* the same under the circumstances and in accordance with the provisions of this section, and to have all the benefits thereof as *fully and completely* as are herein provided, touching such consolidated organization.”

The Hannibal and St. Joseph Railroad Company, (to whose rights the Central Branch Union Pacific Railway Company, under section 15 of the act of 1862 succeeds by assignment,) is one of the companies named in the act of 1862, and by the act of 1864 authorized to consolidate with one or more of the other companies.

I am, therefore, clearly of opinion, that under the provisions of the sixteenth section of the act of 1864, whenever the Central Branch Union Pacific Railroad Company should have completed its road, in conformity to the requirements of law, and should find that another road, intended or necessary to form a portion of a continuous line from St. Joseph and Atchison to the Pacific coast, had not constructed the portion required by that act, it would be authorized to continue the construction of its road and telegraph in the general direction and route upon which said incomplete or unconstructed road was by said act authorized to be built, and would be entitled to the lands and bonds to which such other company would have been entitled for the construction of a road and telegraph over the same ground.

The question remains, whether this authority of right is affected or impaired by the act of July 3, 1866?

Under the act of 1864 a time was limited within which each of the companies authorized to participate in the construction of the Pacific Railroad should file in the Department of the Interior a map, designating the general route of the railroad which it undertook to construct. The Union Pacific Railway Company, Eastern Division, had, under section nine of that act, the right to elect whether it would connect its road with the main trunk line, at the 100th meridian, or, if it were found more practicable and desirable, at any point westwardly of that point.

This right of selecting a route was *terminated* by the filing of a map designating the route by the Republican Fork to the point of junction at the 100th meridian. It is evident that this selection of a route was of vital importance to the the Central Branch Company.

They were limited in the construction of their own road, whichever route they might choose, to receive lands and bonds for only a distance of one hundred miles. But they had the choice whether they would take the route through Atchison to connect with "the road through Kansas," or connect with the road from Iowa, or build an independent line from St. Joseph to the 100th meridian, with the consent of the State of Kansas. They did not determine their course until the road through Kansas had filed the map designating the line of the Republican Fork, which made a connection practicable within the one hundred miles, without deviating from the general direction westward toward the Pacific coast. They then filed their map, completed the contract for building their road, for which provisional arrangements had been previously made, and expended their money upon the faith of the law, which required either that the "road through Kansas" should be built on a route to the 100th meridian, with which they might connect by building their road on the line selected and contracted for, or else when they had built their road to the contemplated point of connection they might extend it to the 100th meridian, with the substituted right to a subsidy of lands and bonds for the additional distance.

In this state of facts, the act of July 3, 1866, without notice or opportunity to be heard being given them, was passed. It expressly recited that the Union Pacific Railway Company, Eastern Division, was then *required by law* to connect with the Union Pacific Railroad at the 100th meridian, and allowed it to substitute a new map, designating a different route to connect with the Union Pacific Railroad at any point not more than fifty miles west of the meridian of Denver and Colorado.

The Central Branch Company was not named or referred to in the act, though it protested against its passage as soon as it was aware of its introduction into Congress. No right was given to it to file a new map, or to change its route, if such change would have been practicable. Its railroad was

partly built ; the whole of it was under contract ; the money of its stockholders, subscribed and paid in by them in good faith toward building a part of the great railroad to the Pacific coast from one of the designated termini on the Missouri river, was invested in the enterprise beyond recall. Unless the right to extend it survived, it was left a mere avenue into the wilderness.

The act of 1862 contained the provision that Congress "the better to accomplish the object of the act," and "having due regard for the rights of the said companies named therein," might "at any time add to, alter, amend, or repeal" the same. The act of 1864 provided that Congress might any time alter, amend, or repeal it. But the result of construing the legislation of 1866, as depriving the Central Branch Company of the right guaranteed by the acts of 1862 and 1864, after the expenditure of its money, would be so *contrary to all the requirements of justice*, and so *subversive of the public faith*, that nothing but the clearest expression of the legislative will could justify such a construction. Its terms only import an authority to the Union Pacific Railway Company, Eastern Division, to adopt a new line, and receive the same amount of bonds from the United States as if their road had been constructed on the line before fixed.

No rights of any other company are expressly taken ; nor do I think they can be by necessary implication. The Central Branch Company was *not*, in its original design, a *mere branch* of the road through Kansas ; it represented *one* of the *important points* on the Missouri river, for which it was intended to secure the most practicable and best connection with the Pacific coast. Its corporators have proceeded in good faith to execute their part of the contract with the National Government. It is not to be supposed that Congress intended to require them to do it all over again.

Being informed, therefore, that the Central Branch Union Pacific Railroad Company have completed their road from St. Joseph via Atchison one hundred miles westwardly to a



point where a junction might have been effected with the Union Pacific Railroad, Eastern Division, if the road of the latter company had been built according to the plan filed in the Department of the Interior, which designated its route as required by law before the passage of the act of 1866, I am of opinion that the Central Branch Company has still the right, given it by the act of 1864, to continue and extend its road to the 100th meridian upon the route last named, and to claim and receive in aid of its construction the lands and bonds to which the Union Pacific Railway Company, Eastern Division, would have been entitled for constructing the same if the act of 1866, giving it liberty to change its route, had not been passed.

E. R. HOAR.

Boston, *November* 29, 1870.

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